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Attorneys for Plaintiff-in-Interpleader  
 Sun Life Assurance Company of Canada (U.S.)

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

SUN LIFE ASSURANCE COMPANY OF  
 CANADA (U.S.),

Plaintiff-in-Interpleader,

vs.

GERALD COHEN, as the Administrator of the  
 Estate of Ronald Marinaccio; BOB and  
 SHIRLEY WITHROW; ANNETTE  
 SCHWARTZ; and DOES 1 through 10,  
 inclusive,

Claimants-in-Interpleader.

CASE NO.: CV 06-01109 JW

Hon. James Ware

**STIPULATION OF THE PARTIES FOR:**

- 1. DISCHARGE AND DISMISSAL WITH  
 PREJUDICE OF PLAINTIFF-IN-  
 INTERPLEADER SUN LIFE  
 ASSURANCE COMPANY OF CANADA  
 (U.S.);**
- 2. AWARD OF REASONABLE  
 ATTORNEYS' FEES AND COSTS OF  
 \$4,200 TO PLAINTIFF-IN-  
 INTERPLEADER SUN LIFE  
 ASSURANCE COMPANY OF CANADA  
 (U.S.);**
- 3. TRANSFER OF REMAINING  
 INTERPLED FUNDS TO THE CLERK  
 OF THE SUPERIOR COURT OF  
 CALIFORNIA, COUNTY OF SANTA  
 CLARA; AND**
- 4. ~~PROPOSED~~ ORDER**

Complaint Filed: November 28, 2005

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RECITALS

WHEREAS, on November 2, 1995, Plaintiff-in-Interpleader Sun Life Assurance Company of Canada (U.S.) ("SUN LIFE") issued annuity contract number 50-77-7700534682 (the "Annuity") to Ron Marinaccio; and

WHEREAS, Ron Marinaccio died on March 7, 2005; and

WHEREAS, on or about September 14, 2005, SUN LIFE received a letter from counsel for the Trust Estate of Ronald Marinaccio (the "Trust Estate") informing SUN LIFE that the Trust Estate was asserting a claim to the death benefits due under the Annuity; and

WHEREAS, Claimant-in-Interpleader Gerald Cohen ("COHEN") is the Administrator of the Trust Estate; and

WHEREAS, or about October 17, 2005, SUN LIFE received a letter from counsel for Claimants-in-Interpleader Robert Withrow and Shirley Withrow (the "WITHROWS"), which identified the WITHROWS as the beneficiaries under the Annuity and requested information regarding the Annuity; and

WHEREAS, at the time it filed its Complaint-in-Interpleader, SUN LIFE was informed and believed that Claimant-in-Interpleader Annette Schwartz ("SCHWARTZ") contested the claims of the WITHROWS and COHEN to the death benefits due under the Annuity, and was asserting a claim to those proceeds; and

WHEREAS, faced with competing claims to the death benefits due under the Annuity, SUN LIFE filed its Complaint-in-Interpleader on November 28, 2005 in the United States District Court for the Eastern District of California; and

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1 WHEREAS, concurrent with the filing of the Complaint-in-Interpleader, SUN LIFE  
2 deposited with the Clerk for the United States District Court for the Eastern District of California a  
3 check in the amount of \$47,817.24 (the "Interpled Funds"), which represented the proceeds of  
4 \$47,792.38, payable pursuant to Ronald Marinaccio's coverage under Annuity, and accrued interest  
5 of \$24.86 through the date of deposit; and

6  
7 WHEREAS, after SUN LIFE filed its Complaint-in-Interpleader and deposited the  
8 Interpled Funds, this action and the Interpled Funds were transferred by agreement of the parties to  
9 this Court from the United States District Court for the Eastern District of California; and

10  
11 WHEREAS, this Court remains in possession of the Interpled Funds; and

12  
13 WHEREAS, there is currently pending in the California Superior Court, County of Santa  
14 Clara, a case entitled *In re the Ronald Anthony Marinaccio Revocable Living Trust*, Case No. 105-  
15 PR-157126, wherein COHEN has filed a petition requesting confirmation of the Validity of the  
16 Trust and Confirmation of Trust Assets, including the death benefits due under the Annuity; and

17  
18 WHEREAS, SCHWARTZ recently has indicated that she is not claiming an interest in  
19 the death benefits due under the Annuity; and

20  
21 WHEREAS, the parties agree that SUN LIFE should be discharged with prejudice from  
22 all liability with respect to all rights and obligations arising under or relating to the Annuity; and

23  
24 WHEREAS, the parties agree that SUN LIFE should be dismissed from this action with  
25 prejudice; and

1 WHEREAS, the parties agree that SUN LIFE should be awarded its reasonable attorneys'  
2 fees and costs in the amount of \$4,200 which SUN LIFE was forced to incur in bringing its  
3 interpleader action, and which amount is to be paid from the Interpled Funds currently on deposit  
4 with this Court; and

5  
6 WHEREAS, SUN LIFE waives and releases all of its rights with regard to the Interpled  
7 Funds, other than its right to the attorneys' fees and costs awarded in this stipulation; and

8  
9 WHEREAS, the parties agree that upon the discharge and dismissal of SUN LIFE and the  
10 payment of SUN LIFE'S reasonable attorneys' fees and cost, the remaining Interpled Funds should  
11 be transferred to the Clerk of the California Superior Court, County of Santa Clara; and

12  
13 WHEREAS, upon transfer of the Interpled Funds to the Clerk of the California Superior  
14 Court, County of Santa Clara, this action should be dismissed in its entirety.

15  
16 **STIPULATION**

17  
18 NOW, THEREFORE, the parties stipulate and agree, subject to the Court's approval, as  
19 follows:

- 20  
21 1. That SUN LIFE be discharged with prejudice from all liability with respect to all  
22 rights and obligations arising under or relating to the Annuity.  
23  
24 2. That SUN LIFE be dismissed from this action with prejudice.  
25  
26 3. That SUN LIFE be awarded its reasonable attorneys' fees and costs of \$4,200, to be  
27 paid from the Interpled Funds currently on deposit with the Court.  
28

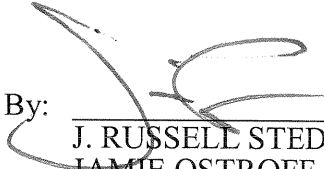
1           4. That SUN LIFE waives and releases all of its rights with regard to the Interpled  
2 Funds, other than its right to the attorneys' fees and costs awarded in this stipulation.

3  
4           5. That after the discharge and dismissal of SUN LIFE and the award of its reasonable  
5 attorneys' fees and costs, the remaining Interpled Funds should be transferred to the Clerk of the  
6 California Superior Court, County of Santa Clara, pending further direction as to the distribution of  
7 the funds by the Superior Court in case number 105-PR-157126, entitled *In re the Ronald Anthony*  
8 *Marinaccio Revocable Living Trust*.

9  
10           6. That upon transfer of the Interpled Funds to the Clerk of the California Superior  
11 Court, County of Santa Clara, this action should be dismissed in its entirety.

12  
13 Dated: <sup>June 21</sup> April \_\_, 2006

BARGER & WOLEN LLP

14  
15 By:   
16 J. RUSSELL STEDMAN  
17 JAMIE OSTROFF  
18 Attorneys for Plaintiff-in-Interpleader  
19 Sun Life Assurance Company of Canada  
20 (U.S.)

21  
22 Dated: April \_\_, 2006

23 By: \_\_\_\_\_  
24 MARTIN N. LETTUNICH  
25 Attorney for Claimant-in-Interpleader  
26 Gerald Cohen, Administrator of the  
27 Estate of Ronald Marinaccio  
28

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BARGER&WOLEN FAX: + 0262-041814083953120

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1 4. That SUN LIFE waives and releases all of its rights with regard to the Interpled  
2 Funds, other than its right to the attorneys' fees and costs awarded in this stipulation.

3  
4 5. That after the discharge and dismissal of SUN LIFE and the award of its reasonable  
5 attorneys' fees and costs, the remaining Interpled Funds should be transferred to the Clerk of the  
6 California Superior Court, County of Santa Clara, pending further direction as to the distribution of  
7 the funds by the Superior Court in case number 105-PR-157126, entitled *In re the Ronald Anthony*  
8 *Marinaccio Revocable Living Trust*


9  
10 6. That upon transfer of the Interpled Funds to the Clerk of the California Superior  
11 Court, County of Santa Clara, this action should be dismissed in its entirety.

12  
13 Dated: April \_\_, 2006

BARGER & WOLEN LLP

14  
15 By: J. RUSSELL STEDMAN  
16 JAMIE OSTROFF  
17 Attorneys for Plaintiff-in-Interpleader  
18 Sun Life Assurance Company of Canada  
(U.S.)

19 Dated: April 28, 2006

20  
21 By:   
22 MARTIN N. LETTUNICH  
23 Attorney for Claimant-in-Interpleader  
24 Gerald Cohen, Administrator of the  
25 Estate of Ronald Marinaccio  
26  
27  
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MNL/ELN/GRNM LAW DEC. Fax: 408-395-3120  
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MNL/ELN/GRNM LAW DEC. Fax: 408-395-3120

Jun 20 2006 13:07 P.22  
PICONE AND DEFILIPPIS  
May 24 2006 10:08 P.08  
PAGE 02/02

1 Dated: <sup>May</sup> ~~April~~ 18, 2006

PICONE & DEFILIPPIS

2  
3  
4 By: 

5 STEPHEN S. PICONE  
6 Attorneys for Claimants-In-Interpleader  
7 Bob and Shirley Widrow

8  
9  
10 Dated: <sup>S-1426</sup> April 18, 2006

PARCELLS LAW FIRM

11 By: 

12 BARTON B. PARCELLS  
13 Attorneys for Claimant-In-Interpleader  
14 Arnette Schwartz  
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21  
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WITNESSES  
JAN 10 2006

-5-  
CV 06-01109 JW  
STIPULATION OF THE PARTIES

**PROPOSED ORDER**

Having considered the stipulation of the parties, and good cause appearing, the Court  
ORDERS as follows:

1. SUN LIFE is discharged with prejudice from all liability with respect to all rights and  
obligations arising under or relating to the Annuity.

2. SUN LIFE is dismissed from this action with prejudice.

3. SUN LIFE is awarded its reasonable attorneys' fees and costs of \$4,200, to be paid from  
the Interpled Funds currently on deposit with this court.

4. SUN LIFE waives and releases all of its rights with regard to the Interpled Funds, other  
than its right to the attorneys' fees and costs awarded in this order.

5. Upon SUN LIFE'S discharge and dismissal, and the award of SUN LIFE'S reasonable  
attorneys' fees and costs, the remaining Interpled Funds shall be transferred to the Clerk of the  
California Superior Court, County of Santa Clara, pending further direction as to the distribution of  
the funds by the Superior Court in case number 105-PR-157126, entitled *In re the Ronald Anthony  
Marinaccio Revocable Living Trust*.

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1           6. That upon transfer of the Interpled Funds to the Clerk of the California Superior Court,  
2 County of Santa Clara, this action should be dismissed in its entirety.

3  
4           **IT IS SO ORDERED.**

5  
6 Dated: June 28, 2006

7  
8 By:

  
UNITED STATES DISTRICT COURT  
JUDGE